IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Baija @ Baijnath Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.288/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 6-2-2002 in Sessions Case No.70/2001 passed by Shri Satish Kumar Sharma, RHJS, Additional Sessions Judge (Fast Track) No.1 Dholpur.

Date of Judgment: October 13, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. N.A.Naqvi, for the appellant.

Mr. R.P.Kuldeep, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in the instant appeal is to the judgment dated February 6, 2002 of the learned Additional Sessions Judge (Fast Track) No.1 Dholpur, whereby Baija @ Baijnath, the appellant herein, was convicted and sentenced as under:-

U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.1000/- in default to further suffer rigorous imprisonment for two months.

U/s.3/25 Arms Act:

To suffer rigorous imprisonment for two years and fine of Rs.500/- in default to further suffer rigorous imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. On July 27, 1999 Siya Ram (Pw.3) submitted a written report at Police Station Sadar Dholpur stating therein that in the preceding night around 11.00 PM while he, his brother Kunj Bihari and his son Kilol Singh were sitting outside the house, the appellant along with Chitra, Naresh, Hariya and Piddeena came armed with guns and asked them to leave the village. Baijnath then opened fire at Kilol, who died instantly. On that report a case under sections 302 IPC and 3/25 Arms Act was registered and investigation commenced. Dead body was subjected to autopsy, statements of witnesses were recorded, appellant was arrested and necessary memos were drawn. On completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Dholpur. Charges under sections 302 IPC and 3/25 Arms Act were framed. The appellant denied the charges and claimed trial. The prosecution in support of its case examined as may as 11 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. On hearing final submissions learned trial Judge convicted and sentenced the appellant as indicated herein above.

3. Having considered the submissions advanced before us and on scrutinising the record, we notice that death of Kilol was homicidal in nature. As per autopsy report (Ex.P-6) Kilol received following antemortem injuries:-

1. Bleeding from both nostrils present
2. Gunshot wound 2cm x 1cm x skin deep wound borders are blackened situated out right arm, 15cm around elbow at outer lateral aspect, Gun powder is impregnated and whole of right upper limb from shoulder to wrist on post lateral aspect.
3. Gunshot entry wound 2cm x 1cm oval in shape deep to thoracic

cavity. Edges are blackened & inner situated at right side of chest just above nipple over areola. Direction of wound is from right to left obliquely backward. Piercing middle of lobe of right lung. Both atrim of heart & middle lobe of left lung and bullet is reaching at posterior wall of thoracic cavity (left side) at the level of 5th & 6th rib from which bullet is recovered and sealed.
4. Gun powder is impregnated at right side of chest and upper abdomen (Rt. side) except corresponding if right arm & fore arm which was lying downward on chest.

The cause of death was gunshot injury to vital organs i.e. Heart and both lungs leading to hemorrhagic shock.

5. Since the conviction of the appellant is founded on the testimony of Kunj Behari (Pw.1), Gajraj (Pw.2) and Siya Ram (Pw.3), we straightway proceed to consider their evidence. Supporting the prosecution story these witnesses categorically deposed that it was the appellant who opened fire at Kilol and killed him. They have also named Chitra, Naresh, Hariya and Piddeena and deposed that they formed unlawful assembly with the appellant, but the Investigating Officer, on the basis of material collected during investigation, found that Chitra, Naresh, Hariya and Piddeena were falsely implicated therefore charge sheet was filed only against the appellant. Learned counsel for the appellant vehemently urged that the testimony of Kunj Bihari, Gajraj and Siya Ram ought to have been rejected in toto since it was found false qua Chitra, Naresh, Hariya and Piddeena. We are unable to accept this contention as we find the presence of these witnesses at the time of incident quite natural therefore from their evidence we have to cull out the nuggets. In State of UP Vs. Anil Singh, [1989 Cr.L.R. (SC) 49] Hon'ble Supreme Court observed as under:- (Para 16)

> "If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the

> inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

6. In Bijoy Singh Vs. State of Bihar (2002)9 SCC 147 it was indicated by the Hon'ble Supreme Court that the maxim falsus in uno falsus in omnibus is not a sound rule to apply in the conditions in this country and, therefore, it is the duty of the court in cases where a witness has been found to have given unreliable evidence in regard to certain particulars, to scrutinise the rest of his evidence with cae and caution. If the remaining evidence is trustworthy and the substratum of the prosecution case remains intact, then the court should uphold the prosecution case to that extent.

7. On examining the testimony of Kunj Bihari, Gajraj and Siya Ram from the point of view of trustworthyness, we find them reliable in so far as the allegations against appellant are concerned. Ocular testimony of these witnesses gets support from medical evidence. Dr. Adarsh Saxena (Pw.4) who conducted autopsy on dead body of Kilol deposed that the cause of death was gunshot injury to vital organs i.e. heart and both lungs leading to hemorrhagic shock.

8. The gun allegedly used in commission of offence got recovered at the instance of appellant. Amar Chand, IO (Pw.7) who arrested the appellant, deposed that at the time of arrest appellant had one .315/8mm country made SBBL Pachphera gun along with one 8mm KF live cartridge and two 8mm KF cartridge cases which were recovered vide memo (Ex.P-10). Pratap Singh (Pw.9) motbir supports the recovery.

9. To establish charge under section 3/25 Arms Act, the prosecution examined Abhay Kumar, District Magistrate (Pw.11), who accorded sanction (Ex.P-12A) for prosecute the appellant under the said section. The gun and cartridges were sent for examination to FSL. As per FSL Report (Ex.P-14) the result of examination was as under:-

> "1. one .315/8mm country made SBBL gun (W/1) from packet 'E' is a serviceable firearm.
> 2. The examination of the barrel residue indicates that submitted country made SBBL gun (W/1) had been fired. However the definite time of its last fire could not be ascertained..."

10. In the ultimate analysis we find that charges under sections 302 IPC and 3/25 Arms Act are established against appellant beyond reasonable doubt and he was rightly convicted and sentenced by the learned trial Judge.

11. For these reasons, we do not find any merit in the instant appeal and the same accordingly stands dismissed. Conviction and sentence awarded to appellant under sections 302 IPC and 3/25 Arms Act are confirmed.

(Chatra Ram Jat),J. (Shiv Kumar Sharma)J.

arn/